

## II. REMARKS

1. Claims 1 - 39 remain in the application.

2. Applicants respectfully submit that claims 1 - 39 are patentable over the combination of Matsumoto et al. (US 5, 819,212, "Matsumoto") in view of Yasunaga et al. (US 6,453,288, "Yasunaga").

2.1 The combination of Matsumoto and Yasunaga fails to disclose or suggest using the determined coding efficiency to select a pitch predictor order for the selected coding method, if the audio signal is coded on the basis of a predicted signal in the selected coding method, as recited in claims 1, 21, and 27.

The Examiner correctly points out that Matsumoto fails to disclose this feature. Applicant fails to find this feature in Yasunaga. Yasunaga does not appear to use coding efficiency to select a pitch predictor order for a selected coding method. While the words "pitch" and "predictive" do appear in Yasunaga, the cited portion of Yasunaga simply states that a pitch weighting filter calculator acquires pitch predictive coefficients of a third order. A careful reading of Yasunaga finds no disclosure related to selecting a pitch predictive order using coding efficiency.

2.2 In addition, the problems solved by the present invention and Yasunaga are completely different, and therefore, a person skilled in the art would not even start to use Yasunaga to solve the problem of the present invention. Furthermore, in the section referred to by the Examiner, column 15, lines 1-10 and the abstract, (or elsewhere in the reference) the selection of the order is not taught on the basis of the encoding efficiency.

As a result, the present invention cannot be achieved by combining Yasunaga with Matsumoto.

2.3 Furthermore, Applicant respectfully submits that there is no suggestion or motivation to combine Matsumoto and Yasunaga. Applicant finds no suggestion in the nature of the problem to be solved, in the references themselves, or in the knowledge generally available to one of ordinary skill in the art to modify or combine the references.

The problem in Matsumoto is to encode speech with better quality. The method is to divide the speech into upper and lower bands and to determine in advance which encoding method for the upper and lower bands.

In Yasunaga, the problem is to reduce the memory quantity required for vector encoding (for the storage of vectors) and to improve the quality of the encoding; the method to solve the problem is to use seed number generators to create vectors, and the solution is to store the seed numbers only.

Thus, the nature of the problems to be solved by the references is notably different and does not suggest a combination of the references. Further, there is no suggestion in either reference of such a combination at least because the references are directed to diverse subject matter.

Consequently, the present Office Action does not demonstrate under the requirements of 35 USC 103, how the combination of Matsumoto and Yasunaga discloses or suggests all the features of the present claims. Furthermore, no motivation has been demonstrated for the combination. On the contrary, a person skilled in the art would be prejudiced against such a combination, because the references solve different problems.

2.4 Applicants respectfully submit that selecting a pitch predictive order using coding efficiency is not obvious at all when considering the prior art. Applicants submit that such a conclusion is based on impermissible hindsight because it requires knowledge beyond the level of ordinary skill in the art at the time the claimed invention was made and appears to include knowledge gleaned only from Applicants' disclosure.

At least for these reasons, Applicant respectfully submits that claims 1, 21, and 27 are patentable over the combination of Matsumoto and Yasunaga. Claims 2-20, 22-26, and 28-39 depend from claims 1, 21, or 27 and therefore are also patentable over the cited combination.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

Joseph V. Gamberdell, Jr.  
Joseph V. Gamberdell, Jr.  
Reg. No. 44,695

November 24, 2003  
Date

Perman & Green, LLP  
425 Post Road  
Fairfield, CT 06824  
(203) 259-1800  
Customer No.: 2512

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to the Commissioner of Patents, P.O. Box 1450, Alexandria VA 22313-1450.

Date: 11/24/03

Signature: Doris W. Perman  
Person Making Deposit